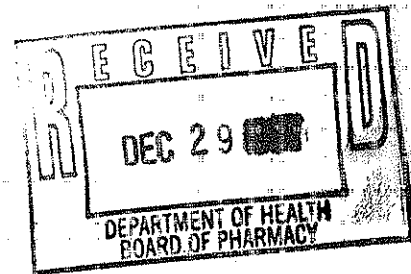


STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH, BOARD
OF MEDICAL LICENSURE AND DISCIPLINE



IN THE MATTER OF:

DANIEL HOCHBERGER, M.D.

NO. C96-251

DECISION

BACKGROUND AND TRAVEL: This matter came on to be heard before the three member Hearing Committee ("Hearing Committee") of the Board of Medical Licensure and Discipline ("Board") in accordance with the provisions of R.I.G.L. 5-37-5.2 on November 12, 1997.

The hearing took place as a result of specification of charges of unprofessional conduct made against Daniel Hochberger, M.D. ("Respondent") after an investigation by an Investigating Committee of the Board.

The specification of charges (State's Exhibit 3) alleged that the Respondent violated R.I.G.L. 5-37-5.1, as amended, (1995 Reenactment). The charges alleged that the Respondent received a request for a response from the Board on July 30, 1996, September 2, 1996, and October 10, 1996, the later two by certified mail, that he failed to respond to of the Board and was guilty of violating R.I.G.L. 5-37-5.1 for failure to furnish the Board information legally requested.

The Respondent was further charged with failing to provide medical records to the patient's attorney after three written requests and numerous phone requests in violation of R.I.G.L. 5-37-22(d). Additionally, it was alleged that the Respondent did not

respond to the attorney's request for records, sent the patient's records to the wrong attorney, "who was also requesting records regarding another matter, and the Respondent had not addressed the other attorney's request either. The charges asserted that the Respondent therefore violated R.I.G.L. 5-37-22(d).

Lastly, it was charged that the manner in which the Respondent addressed these requests from the Board and from attorneys on behalf of his patients raised the issue of professional and mental incompetency as contemplated by R.I.G.L. 5-37-5.1(18).

Investigating Committee II of the Board requested that the hearing panel require a mental and physical examination of the Respondent.

FINDINGS OF FACT

SUBMISSION OF DANIEL A. HOCHBERGER, M.D.: As part of his case, the Respondent submitted a document entitled "Submission of Daniel A. Hochberger, M.D." (Exhibit A). As part of that submission, Respondent noted that he makes no excuses for not having responded to letters of inquiry on behalf of the Board, and that he held the ultimate responsibility to insure that the pertinent requests for copies of the patient's record be sent in a timely manner. He noted, however, that unbeknownst to him personally the records that were requested by the complaining attorney was a separate and distinct matter from an earlier claim being pursued by another attorney relating to the same patient.

The Respondent argued that when he responded to the attorney involved in the major claim by sending that attorney the patient's records, he "mistakenly believed he had resolved the imbroglio."

The Respondent pointed out that it was not his patient who was making the complaint, but rather the patient's attorney, and that the patient, herself, never asked for copies of her records personally.

In support of this issue, the Respondent submitted an Affidavit signed by the patient, which stated that the patient was a patient of the Respondent for many years, had always found the Respondent's medical judgment, timeliness of care, and professional compassion to be excellent, and that the patient never personally requested a copy of her medical records from the Respondent.

The Affidavit further pointed out that the patient had two separate personal injury claims pending and that the claim handled by the attorney, who filed the complaint with the Board, was for a "minor bump on the head." She further stated under oath that both claims have been settled.

The Respondent argued that "[t]herefore, it seems terribly unfair and unduly harsh to impose a public reprimand on a physician who is guilty of lax administrative practices, that had absolutely no impact on patient care or safety, but merely inconvenienced a plaintiff attorney (not the patient-client)."

The Hearing Committee has carefully examined these and other statements in the Respondent's Exhibit A "Submission."

JOINT STATEMENT OF UNDISPUTED FACTS: At the hearing, by agreement between the attorneys for the Respondent and the Investigating Committee of the Board, both of whom signed the document, a Joint Statement of Undisputed Facts

("statement") was submitted. (Exhibit 2) That statement identified the patient, noted that she sustained an injury on February 6, 1995, and was treated by the Respondent.

The stipulated facts further showed that on February 28, 1995, a medical authorization was sent by the patient's attorney, Stephen M. Rappoport, to the Respondent. The relevant document is contained in State's Exhibit 1 (letter and authorization of February 28, 1995).

According to the undisputed facts, the Respondent's office on March 31, 1995, requested \$75 for a fee for the information, and this was sent to the Respondent's office on August 29, 1995. The check was cashed, but the records were not sent.

Thereafter, the requesting attorney's office contacted the Respondent's office, requesting the records on nineteen occasions, between September 1995 and July 1996. On July 15, 1996, the patient's attorney called the Respondent's office and left a message indicating that he would be filing a complaint with the Medical Board if in fact he did not get the reports. On July 23, 1996, said attorney wrote a letter to the Board on this matter. Said letter is contained in the State's Exhibit 1. The letter detailed the activity relating to the request for records and noted that a copy was sent to the patient and to the Respondent.

The letter at the end of the last full paragraph stated "[o]n behalf of my client, we are asking for immediate action to be taken."

The stipulated facts further state that the Board sent a copy of the complaint to the Respondent and requested a response on July 30, 1996, September 2, 1996 (via certified mail), and October 10, 1996 (via certified mail). When the Respondent did

finally respond to the Board, he responded by sending copies of documents that he had faxed to the wrong attorney. The Respondent faxed copies of medical records to Attorney Calvino, who represented the patient on another personal injury matter.

The Respondent, according to the "statement" at page 2, responded by sending to the Board information relating to the matter in which Attorney Calvino represented the patient and not the matter in question.

A letter dated February 13, 1997, from Attorney Rappoport to "Diane" at Dr. Daniel Hochberger's office noted that the attorney had not received medical reports relating to the incident that occurred to his client (the patient) on 2/6/95. The letter further noted that the voluminous records that were received by the attorney's office from the Respondent and directly from the Department of Health, Board of Medical Licensure and Discipline, did not contain any reports relating to that accident.

The letter inquired "[c]ould you kindly let me know where those records are."

At the hearing, both the Respondent and his attorney spoke and answered questions posed by the Hearing Committee. Respondent said that the issue of where the problem came up was that he didn't realize that there were two cases. (Record at 22) He said that any record that would have been sent to Attorney Calvino the same identical record was sent to Attorney Rappoport. (Record at 23) He said that even when he brought the cover to cover record, including both incidences to the Board, he still had not realized that there was a second case involved. (Record at 24) He said it turned out to be one page that Attorney Rappoport was looking for and he gave him a

cover to cover massive copy. (Record at 24) He said there was a misunderstanding on his part that there were two cases. (Record at 25)

He said he looked at the Board's request, didn't read it verbatim, and figured the records had been sent. (Record at 25-26)

As to the certified Board request, he said his recollection was once again that the records had indeed been sent and he was in compliance. (Record at 26)

CONCLUSION

Based upon the record, evidence and exhibits presented, the Hearing Committee finds and concludes that the Respondent violated R.I.G.L. 5-37-5.1 and was guilty of unprofessional conduct by failing to provide, as alleged in paragraph 2 of the Charges, medical records to the patient's attorney in violation of R.I.G.L. 5-37-22(d).

The Hearing Committee further finds and concludes that the Respondent so failed to respond to the official requests of the Board that his conduct was unprofessional conduct in violation of R.I.G.L. 5-37-5.1 for failing to furnish to the Board information legally requested by the Board.

After considering and weighing the totality of the evidence present in the record, the Hearing Committee finds and concludes that the Respondent's conduct requires that a reprimand be imposed and that the Respondent submit to the mental and physical examination requested by the Investigating Committee of the Board.

ORDER

In accordance with the findings and conclusions set forth in the Decision, the Hearing Committee of the Board makes the following Order:

1. That the Respondent be reprimanded.
2. That the Respondent submit to a mental and physical examination in accordance with the protocol established by the Board with the Physician's Health Committee of the Rhode Island Medical Society.
3. That the Respondent pay an administrative cost of Five Hundred (\$500.00) Dollars.

ENTERED this 10th day of December, 1997.

Trina P. Barnes
Chairperson and Public Member of the
Hearing Committee of the Board

Paul E. Sapir, M.D.
Physician Member of the
Hearing Committee of the Board

Margaret Coughlin
Margaret Coughlin
Public Member of the
Hearing Committee of the Board

RATIFIED AND APPROVED BY THE DIRECTOR OF HEALTH:

Patricia A. Nolan, MD, MPH
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NOTICE

This Decision may be appealed to the Superior Court of the State of Rhode Island within thirty (30) days hereof.

CERTIFICATION

I hereby certify that I mailed a true copy of the within Decision to Bruce McIntyre, Esq. at Department of Health, Room 205, Providence, Rhode Island, 02908 and to William F. White, Esq., Tate & Elias, One Providence Washington Plaza, Providence, Rhode Island 02903, sent on this 10th day of December, 1997.

Sharon Beech